

**IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL**

Criminal Misc. Application No. 215 of 2006

1. Vishnu Dayal Sharma
S/o Hulas Singh presently
Posted as Sub Inspector Police at
P.S. Palia, District Khiri Lakhimpur
 2. Attaulla Khan S/o Mohamood Hasan presently
Posted as Sub Inspector Police at
P.S. Sahapur, District Muzaffarnagar
 3. Udai Veer Singh S/o Sri Amar Singh presently
Posted as Constable Police at
P.S. Kotwali, Bareilly
- Applicants

Vs

State of Uttaranchal

...Respondents

Sri G.C. Lakchaura, learned counsel for the petitioners
Learned A.G.A. for the State

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the petitioner – Kamal Giri for quashing the summoning order dated 07.07.2004 passed by Civil Judge (Junior Division) (Judicial Magistrate 1st Class) Kashipur as well as entire proceedings in Criminal Case No. 542 of 2004 State Vs Satish Tyagi & others under Sections 147, 148, 149, 307, 302, 392 I.P.C. pending in the court of Civil Judge (Junior Division) (Judicial Magistrate 1st Class) Kashipur.

2. Brief facts of the prosecution case are that the First Information Report was lodged against the petitioner on 15.09.1996. The police after investigating the matter submitted the final report on 29.12.1997 against the accused persons (including the present applicants). A protest petition was filed before the concerned Magistrate against the final report.

3. The Magistrate after having considered the protest petition came to the conclusion that there was a prima-facie case against the accused and took the cognizance in the matter on 07.07.2004. Thus, the petitioner has filed the petition for quashing entire proceedings pending in the court of Civil Judge (Junior Division) (Judicial Magistrate 1st Class) Kashipur.

4. Heard Sri G.C. Lakhchaura, leaned counsel for the petitioners, learned A.G.A. and perused the record.

5. Learned counsel for the petitioner has submitted before me that after a gap of nine years, Judicial Magistrate, Kashipur, District Udham Singh Nagar took cognizance on 07.07.2004 against the petitioners. Learned counsel for the petitioner has further argued that the Judicial Magistrate neither issued any notice nor they were intimated by anybody.

6. I do not find any force in this argument. The averments advanced by learned counsel for the petitioners are the disputed question of facts which can be judged and assessed by the trial court where the evidence is yet to be adduced. At this stage, I am of the view that there is no abuse of process of court in this case. Any judgment rendered by me would amount to premature judgment especially under the circumstance when the evidence is still to be adduced before the trial judge. I am not supposed to embark upon an enquiry with regard to the credibility of the evidence at this stage.

7. I do not find any ground for quashing the entire proceedings pending in the court below. Therefore, the petition lacks merit and is liable to be dismissed.

8. Accordingly, the petition under Section 482 Cr.P.C.
is dismissed.

(B.C. Kandpal, J.)

10-08-2006
ASWAL